

United States Senate

WASHINGTON, DC 20510

March 31, 2014

The Honorable Thomas E. Perez, Secretary of Labor, Co-Chair
The Honorable Jeh Johnson, Secretary of Homeland Security, Co-Chair
The Honorable Gina McCarthy, Administrator, Environmental Protection Agency, Co-Chair
Interagency Working Group on Improving Chemical Facility Safety and Security
OSHA Docket Office
Docket No. OSHA-2013-0026
Technical Data Center
Room N-2625, OSHA
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

To the Interagency Working Group on Improving Chemical Facility Safety and Security:

We are contacting you to express concern about the potential regulation of ammonium nitrate (AN) under the Environmental Protection Agency's (EPA) Risk Management Program (RMP). Nearly 75% of the AN consumed in the United States is used in the manufacture of explosives, and AN accounts for about 90% of all explosives by weight. There is no viable substitute for AN in the explosives industry, and without explosives mining, quarrying and other essential industries could not function.

As part of its work in implementing Executive Order (EO) 13650, the Interagency Working Group (IWG) is tasked with developing options to improve the safety and security of our nation's chemical facilities. The EO has its roots in the tragic accidental detonation of AN in West, TX, and the IWG is specifically charged (among other things), to identify ways in which the safety of AN management and storage can be enhanced under existing regulatory and policy authorities.

Pursuant to Section 6(a) of the EO, the IWG recently released a Solicitation of Public Input describing the various safety and security options it is considering. One such option is the possible expansion of the RMP to include AN. We urge you to reject this option. A more direct, relevant, and effective means of ensuring the safe handling of AN is already extant in regulations administered by the Occupational Safety & Health Administration (OSHA) at 29 CFR 1910.109(i). In addition, regulations of the Mine Safety and Health Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Department of Homeland Security have proven effective to ensure safety at mine sites. These rules adequately address the risks posed by AN.

At the Senate Environment and Public Works Committee's June 27, 2013 hearing on the West, TX tragedy, Rafael Moure-Eraso, Chairman of the Chemical Safety & Hazard Investigation

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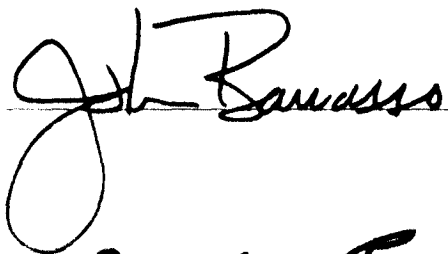
Board recommended that AN be added to EPA's RMP list. At that time, Chairman Moure-Eraso was asked whether he was aware of any accidental detonations of AN where OSHA's regulations had been followed. He replied that he was not aware of any. Following his testimony, Dr. Sam Mannan, of the Mary Kay O'Connor Process Safety Center at Texas A&M, testified that compliance with OSHA's AN regulations could have prevented or mitigated the incident.

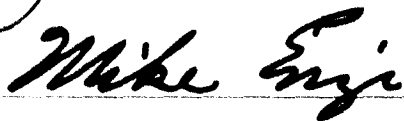
OSHA has demonstrated its commitment to enforcing its AN standard. On October 9, 2013, OSHA issued 24 citations to the owner of the West Fertilizer facility. Eight of those citations concerned violations of the agency's AN rules, including the failure to properly store AN by not eliminating sources of combustible materials, installing necessary fire walls, and limiting bulk quantities of the material. The facility was also cited for not providing proper ventilation or fire suppression in the event of a fire.

We appreciate the serious and important task the IWG has been given in implementing the EO. The safety and security of our nation's chemical facilities, our workers, and our communities is vital. In that regard, we urge you to recommend that OSHA's existing AN standard be bolstered to address the issues presented by the West, TX tragedy, and that efforts be made to increase awareness and enforcement of its requirements. Imposing additional regulatory burdens on compliant facilities by including AN in the RMP will do nothing to protect workers and the public from companies that, either through ignorance or intransigence, avoid compliance with the nation's safety rules.

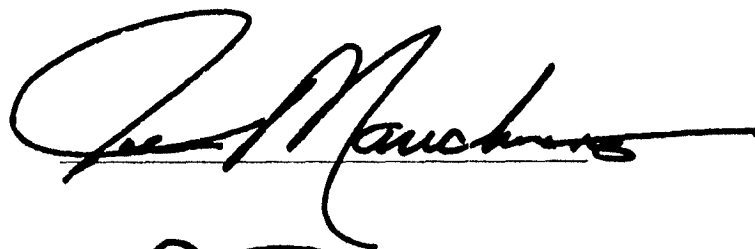
We look forward to reviewing the IWG's final recommendations.

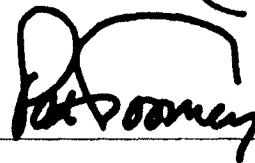
Sincerely,

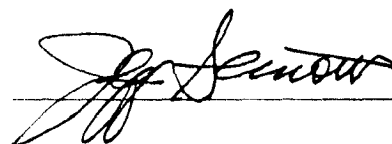




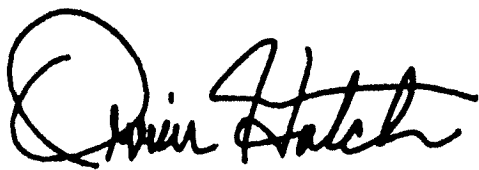








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A handwritten signature in black ink, appearing to read "Quinn Hatch". The signature is written in a cursive style with a large, circular initial "Q".

Cc: The Honorable Eric H. Holder, Jr., Attorney General
Cc: The Honorable Thomas J. Vilsack, Secretary of Agriculture
Cc: The Honorable Anthony Foxx, Secretary of Transportation



UNITED STATES SENATOR JOHN BARRASSO

307 Dirksen Senate Office Building, Washington, D.C. 20510

FACSIMILE TRANSMISSION

To: Honorable Gina McCarthy, Administrator, Environmental
Protection Agency

Fax number: 202-501-1450

From:

3 Pages following this cover sheet.

NOTES: If you have questions contact Brian
Clifford at 202-224-6441.

If you encounter problems with this fax, please contact the
office of Senator John Barrasso at (202) 224-6441